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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,046	09/09/2003	Vaughn M. Moncrieff	CFT-011CIA	3267

28661 7590 09/19/2006  
SIERRA PATENT GROUP, LTD.  
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EXAMINER
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TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/659,046

Applicant(s)

MONCRIEFF ET AL.

Examiner

Cephia D. Toomer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

This Office action is in response to the remarks filed June 26, 2006.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-16 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon (US 3,615,290).

Nixon teaches stable emulsions of normal liquid hydrocarbon comprising a dispersed phase (fuel), at least one nonionic emulsifier as the continuous phase and about 1.5 wt% water and in addition a stabilizer such as succinic anhydride compounds (see abstract). Nixon teaches that the shear rate for forming the emulsion is from about 1,000 to about 50,000 s<sup>-1</sup> (see col. 3, lines 60-65). The fuel may be gasoline, diesel, etc. (see col. 4, lines 14-31). The nonionic surfactant may be fatty acid esters of sorbitan, such as sorbitan monooleate (fuel soluble product)(see col. 6, lines 14-29). Nixon teaches that the stabilizer is a corrosion inhibitor such as metal soaps of polyisobutylene succinic anhydride (see col. 7, lines 45-71). Nixon teaches that the components can be added in any order desired or all of them can be added simultaneously. However, it is preferred that the emulsifiers and corrosion inhibitor are first added to the

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continuous phase, then the hydrocarbon fuel is added to the continuous phase. High-speed blenders are generally used (see col. 7, lines 16-44) and the fuel composition may contain dispersants (see col. 5, lines 26-29).

Nixon teaches the limitations of the claims other than that the emulsifier is a package. However, it would have been obvious to one of ordinary skill in the art to prepare a package because Nixon teaches that the emulsifier, corrosion inhibitor and continuous phase are prepared first, thus suggesting a package. With respect to the recirculating step, it would have been obvious to one of ordinary skill to perform this step because it would ensure proper mixing before the shearing step.

3. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon (US 3,615,290) in view of Basu (US 6,270,541).

Nixon has been discussed above. Nixon fails to teach that the fuel is a non-hydrocarbonaceous fuel. However, Basu teaches this difference. Basu teaches a diesel fuel using methanol and dimethyl ether. Basu also teaches that the composition may contain a conventional diesel fuel or a biodiesel (see abstract; col. 4, lines 56-60).

It would have been obvious to one of ordinary skill in the art to employ non-hydrocarbon fuels because Basu teaches that these compositions perform as well as hydrocarbon fuels, such as the diesel fuel disclosed in Nixon.

4. Applicant's arguments have been fully considered but they are not persuasive.

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5. Applicant argues that the examiner has failed to prove a prima facie case of obviousness because the examiner has not produced evidence that each and every claimed element is taught by the prior art.

The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles or legal precedent established by prior case law. In the instant case, the examiner has set forth a reasonable scientific explanation as to why it would have been obvious to modify the reference. Applicant has not set any persuasive arguments to rebut that put forth by the examiner.

Applicant argues that Nixon specifically states that water is a problem and should be minimized. Applicant argues that in the present invention, water is added to reduce emissions of NO<sub>x</sub> compounds and that Nixon does not teach blending of a flow of water with the other materials.

Nixon does teach that the use of too much water is a problem. However, he teaches that up to 1.5 wt% of water may be added to the composition. This teaching suggests what Applicant has done. With respect to Applicant's argument that the water is added for a reason different from Nixon, it is well settled that the patentee's rationale may be different from applicant's. It is not necessary that the prior art suggest the same rationale to achieve that same advantage or result discovered by Applicant.

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6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Cephia D. Toomer  
Primary Examiner  
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